HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.18009 OF 1998

Between:

T. Jesudas

… Petitioner

AND

The Correspondent, R.C.M., St. John's High School,
Parvathipuram, Vizianagaram District and five others

… Respondents

:: O R D E R ::

Counsel for the petitioner : Shri A. Rama Rao

Counsel for respondent Nos.1 and 2 : Shri K. Vasantha Rao for
Shri Y.V. Ravi Prasad

Counsel for respondent No.6 : Shri K. Jagan Mohan Reddy

June 13, 2007

In this petition, the petitioner has prayed for quashing of the appointment of respondent No.6 as B. Ed Assistant and also for issue of a mandamus to the Management of R.C.M St. John's High School, Parvathipuram, Vizianagaram District (for short, 'the School') to appoint him as B. Ed Assistant with retrospective effect. Another prayer made by him is to direct respondent Nos. 1 and 2 to continue

him in the school.

The petitioner's prayer for retrospective appointment in the post of B. Ed Assistant is founded on the assertion contained in his affidavit that he is senior to respondent No.6 in the cadre of Secondary Grade Teacher and that without considering his case, the management of the school arbitrarily appointed respondent No.6 as B. Ed Assistant.

In the counter filed by respondent No.2, it has been averred that respondent No.6 was appointed as B.Ed. Assistant by direct recruitment and not by promotion and as such, the petitioner does not have the locus to question his appointment. It has been further averred that the petitioner had volunteered to forego his right of promotion as B. Ed Assistant in Social Studies and, therefore, he is estopped from questioning the appointment of respondent No.6.

In his separate counter affidavit, respondent No. 6 Shri K. Dhanunjayudu has averred that he was appointed as B. Ed Assistant with effect from 12-7-1994 and the petitioner does not have right to seek annulment of his appointment because he was not a competitor for appointment on the post of B.Ed. Assistant by direct recruitment.

I have heard Shri M. Rama Rao, learned counsel for the petitioner, Shri K. Vasantha Rao for respondent Nos. 1 and 2 and Shri K. Jagan Mohan Reddy, learned counsel for respondent No.6 and perused the record. In my opinion, the writ petition is liable to be dismissed because,

(i) the petitioner has not impleaded the school as a party respondent. The Correspondent and Manager are the functionaries of the school, but they cannot be treated as the institution which has a juridical personality and which can sue and be sued in its own name. If this Court was to issue a direction for retrospective appointment of the petitioner as B. Ed Assistant, the finances of the school would have been adversely affected. Therefore, in the absence of the school as a party to the writ petition, relief in terms of the prayer made by the petitioner cannot be granted – **Chief Conservator of Forests, Govt.**

of A.P., vs. Collector[1],

(ii) the writ petition is delayed by two years and no explanation worthy name has been offered by the petitioner as to why he did not question the appointment of respondent No.6 as B. Ed Assistant for almost two years. Therefore, by applying the ratio of the Supreme Court's judgment in **P.S Sadasiraswamy v. State of Tamil Nadu**[2] and the general proposition of law laid down by the Supreme Court in **State of Madhya Pradesh v. Bhailal Bhai**[3] and **Trilok Chand v. H.B. Munshi**[4], I hold that the petitioner is guilty of laches,

(iii) although the petitioner has not so pleaded, the averments contained in the affidavit filed by him cannot be construed as complaint regarding alleged violation of his fundamental right to equality guaranteed under Articles 14 and 16 of the Constitution. However, as he has neither pleaded nor any document has been produced before the Court to show that the school and its management fall within the ambit of the term 'other authorities' appearing in Article 226 of the Constitution, his complaint regarding violation of his fundamental right to equality or discrimination cannot be entertained, and

(iv) the petitioner has not controverted the assertion contained in the counter affidavit that respondent No. 6 was appointed as B.Ed. Assistant by direct recruitment and not by promotion. Therefore, the petitioner's assertion that he is senior to respondent No. 6 is irrelevant and he cannot make a grievance against the appointment made on the post of B.Ed. Assistant.

In the result, the writ petition is dismissed.

G.S.SINGHVI, CJ

June 13, 2007

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[1] AIR 2003 SC 1805

[2] 1976 (I) SLR 53

[3] AIR 1964 SC 1006

[4] AIR 1970 SC 898